

SENATE, No. 2614

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 25, 2020

Sponsored by:
Senator DECLAN J. O'SCANLON, JR.
District 13 (Monmouth)

SYNOPSIS

Permits municipalities and counties to require requestor of government record to obtain records from agency website.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning access to government records on a public agency
2 website, and amending P.L.2001, c.404

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 6 of P.L.2001, c.404 (C.47:1A-5) is amended to read
8 as follows:

9 6. a. The custodian of a government record shall permit the
10 record to be inspected, examined, and copied by any person during
11 regular business hours; or in the case of a municipality having a
12 population of 5,000 or fewer according to the most recent federal
13 decennial census, a board of education having a total district
14 enrollment of 500 or fewer, or a public authority having less than \$10
15 million in assets, during not less than six regular business hours over
16 not less than three business days per week or the entity's regularly-
17 scheduled business hours, whichever is less; unless a government
18 record is exempt from public access by: P.L.1963, c.73 (C.47:1A-
19 1 et seq.) as amended and supplemented; any other statute; resolution
20 of either or both houses of the Legislature; regulation promulgated
21 under the authority of any statute or Executive Order of the
22 Governor; Executive Order of the Governor; Rules of Court; any
23 federal law; federal regulation; or federal order. Prior to allowing
24 access to any government record, the custodian thereof shall redact
25 from that record any information which discloses the social security
26 number, credit card number, unlisted telephone number, or driver
27 license number of any person; except for use by any government
28 agency, including any court or law enforcement agency, in carrying
29 out its functions, or any private person or entity acting on behalf
30 thereof, or any private person or entity seeking to enforce payment
31 of court-ordered child support; except with respect to the disclosure
32 of driver information by the New Jersey Motor Vehicle Commission
33 as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except
34 that a social security number contained in a record required by law to
35 be made, maintained or kept on file by a public agency shall be
36 disclosed when access to the document or disclosure of that
37 information is not otherwise prohibited by State or federal law,
38 regulation or order or by State statute, resolution of either or both
39 houses of the Legislature, Executive Order of the Governor, rule of
40 court or regulation promulgated under the authority of any statute or
41 executive order of the Governor. Except where an agency can
42 demonstrate an emergent need, a regulation that limits access to
43 government records shall not be retroactive in effect or applied to
44 deny a request for access to a government record that is pending
45 before the agency, the council or a court at the time of the adoption
46 of the regulation.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 b. (1) A copy or copies of a government record may be
2 purchased by any person upon payment of the fee prescribed by law
3 or regulation. Except as otherwise provided by law or regulation and
4 except as provided in paragraph (2) of this subsection, the fee
5 assessed for the duplication of a government record embodied in the
6 form of printed matter shall be \$0.05 per letter size page or smaller,
7 and \$0.07 per legal size page or larger. If a public agency can
8 demonstrate that its actual costs for duplication of a government
9 record exceed the foregoing rates, the public agency shall be
10 permitted to charge the actual cost of duplicating the record. The
11 actual cost of duplicating the record, upon which all copy fees are
12 based, shall be the cost of materials and supplies used to make a copy
13 of the record, but shall not include the cost of labor or other overhead
14 expenses associated with making the copy except as provided for in
15 subsection c. of this section. Access to electronic records and non-
16 printed materials shall be provided free of charge, but the public
17 agency may charge for the actual costs of any needed supplies such
18 as computer discs.

19 In the case of a municipality or a county, if the government record
20 is readily available on the municipal or county website, the custodian
21 may require the requestor to obtain the record from the website. The
22 custodian shall provide the website address, identify each responsive
23 document, and the specific location on the website of each identified
24 responsive document. The request shall be deemed fulfilled upon
25 notification by the custodian to the requestor of the availability and
26 location of each responsive document. If the requestor does not have
27 access to a computer or is unable to print the requested record, the
28 request shall be processed and fulfilled pursuant to the provisions of
29 P.L.1963, c.73 (C.47:1A-1 et seq.).

30 (2) No fee shall be charged to a victim of a crime for a copy or
31 copies of a record to which the crime victim is entitled to access, as
32 provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

33 c. Whenever the nature, format, manner of collation, or volume
34 of a government record embodied in the form of printed matter to be
35 inspected, examined, or copied pursuant to this section is such that
36 the record cannot be reproduced by ordinary document copying
37 equipment in ordinary business size or involves an extraordinary
38 expenditure of time and effort to accommodate the request, the public
39 agency may charge, in addition to the actual cost of duplicating the
40 record, a special service charge that shall be reasonable and shall be
41 based upon the actual direct cost of providing the copy or copies;
42 provided, however, that in the case of a municipality, rates for the
43 duplication of particular records when the actual cost of copying
44 exceeds the foregoing rates shall be established in advance by
45 ordinance. The requestor shall have the opportunity to review and
46 object to the charge prior to it being incurred.

1 d. A custodian shall permit access to a government record and
2 provide a copy thereof in the medium requested if the public agency
3 maintains the record in that medium. If the public agency does not
4 maintain the record in the medium requested, the custodian shall
5 either convert the record to the medium requested or provide a copy
6 in some other meaningful medium. If a request is for a record: (1) in
7 a medium not routinely used by the agency; (2) not routinely
8 developed or maintained by an agency; or (3) requiring a substantial
9 amount of manipulation or programming of information technology,
10 the agency may charge, in addition to the actual cost of duplication,
11 a special charge that shall be reasonable and shall be based on the
12 cost for any extensive use of information technology, or for the labor
13 cost of personnel providing the service, that is actually incurred by
14 the agency or attributable to the agency for the programming,
15 clerical, and supervisory assistance required, or both.

16 e. Immediate access ordinarily shall be granted to budgets, bills,
17 vouchers, contracts, including collective negotiations agreements
18 and individual employment contracts, and public employee salary
19 and overtime information.

20 f. The custodian of a public agency shall adopt a form for the
21 use of any person who requests access to a government record held
22 or controlled by the public agency. The form shall provide space for
23 the name, address, and phone number of the requestor and a brief
24 description of the government record sought. The form shall include
25 space for the custodian to indicate which record will be made
26 available, when the record will be available, and the fees to be
27 charged. The form shall also include the following: (1) specific
28 directions and procedures for requesting a record; (2) a statement as
29 to whether prepayment of fees or a deposit is required; (3) the time
30 period within which the public agency is required by P.L.1963, c.73
31 (C.47:1A-1 et seq.) as amended and supplemented, to make the
32 record available; (4) a statement of the requestor's right to challenge
33 a decision by the public agency to deny access and the procedure for
34 filing an appeal; (5) space for the custodian to list reasons if a request
35 is denied in whole or in part; (6) space for the requestor to sign and
36 date the form; (7) space for the custodian to sign and date the form if
37 the request is fulfilled or denied. The custodian may require a deposit
38 against costs for reproducing documents sought through an
39 anonymous request whenever the custodian anticipates that the
40 information thus requested will cost in excess of \$5 to reproduce.

41 g. A request for access to a government record shall be in writing
42 and hand-delivered, mailed, transmitted electronically, or otherwise
43 conveyed to the appropriate custodian. A custodian shall promptly
44 comply with a request to inspect, examine, copy, or provide a copy
45 of a government record. If the custodian is unable to comply with a
46 request for access, the custodian shall indicate the specific basis
47 therefor on the request form and promptly return it to the requestor.
48 The custodian shall sign and date the form and provide the requestor

1 with a copy thereof. If the custodian of a government record asserts
2 that part of a particular record is exempt from public access pursuant
3 to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented,
4 the custodian shall delete or excise from a copy of the record that
5 portion which the custodian asserts is exempt from access and shall
6 promptly permit access to the remainder of the record. If the
7 government record requested is temporarily unavailable because it is
8 in use or in storage, the custodian shall so advise the requestor and
9 shall make arrangements to promptly make available a copy of the
10 record. If a request for access to a government record would
11 substantially disrupt agency operations, the custodian may deny
12 access to the record after attempting to reach a reasonable solution
13 with the requestor that accommodates the interests of the requestor
14 and the agency.

15 h. Any officer or employee of a public agency who receives a
16 request for access to a government record shall forward the request
17 to the custodian of the record or direct the requestor to the custodian
18 of the record.

19 i. (1) Unless a shorter time period is otherwise provided by
20 statute, regulation, or executive order, a custodian of a government
21 record shall grant access to a government record or deny a request
22 for access to a government record as soon as possible, but not later
23 than seven business days after receiving the request, provided that
24 the record is currently available and not in storage or archived. In
25 the event a custodian fails to respond within seven business days after
26 receiving a request, the failure to respond shall be deemed a denial
27 of the request, unless the requestor has elected not to provide a name,
28 address or telephone number, or other means of contacting the
29 requestor. If the requestor has elected not to provide a name, address,
30 or telephone number, or other means of contacting the requestor, the
31 custodian shall not be required to respond until the requestor
32 reappears before the custodian seeking a response to the original
33 request. If the government record is in storage or archived, the
34 requestor shall be so advised within seven business days after the
35 custodian receives the request. The requestor shall be advised by the
36 custodian when the record can be made available. If the record is not
37 made available by that time, access shall be deemed denied.

38 (2) During a period declared pursuant to the laws of this State as
39 a state of emergency, public health emergency, or state of local
40 disaster emergency, the deadlines by which to respond to a request
41 for, or grant or deny access to, a government record under paragraph
42 (1) of this subsection or subsection e. of this section shall not apply,
43 provided, however, that the custodian of a government record shall
44 make a reasonable effort, as the circumstances permit, to respond to
45 a request for access to a government record within seven business
46 days or as soon as possible thereafter.

47 j. A custodian shall post prominently in public view in the part
48 or parts of the office or offices of the custodian that are open to or

1 frequented by the public a statement that sets forth in clear, concise
2 and specific terms the right to appeal a denial of, or failure to provide,
3 access to a government record by any person for inspection,
4 examination, or copying or for purchase of copies thereof and the
5 procedure by which an appeal may be filed.

6 k. The files maintained by the Office of the Public Defender that
7 relate to the handling of any case shall be considered confidential and
8 shall not be open to inspection by any person unless authorized by
9 law, court order, or the State Public Defender.

10 (cf: P.L.2020, c.10, s.1)

11
12 2. This act shall take effect immediately.

13
14
15 STATEMENT

16
17 Under current law, if a person requests records from a
18 municipality or a county that are on that public agency's website, the
19 custodian cannot require the requestor to utilize the website to obtain
20 the requested records.

21 This bill permits a municipal or county records custodian to
22 require the requestor to obtain the record from that agency's website
23 when the information is readily available on the website. The
24 custodian must provide the website address, identify each responsive
25 document, and the specific location on the website of each identified
26 responsive document. The request will be deemed fulfilled upon
27 notification by the custodian to the requestor of the availability and
28 location of each responsive document. If the requestor does not have
29 access to a computer or is unable to print the requested record, the
30 request shall be processed and fulfilled pursuant to the provisions of
31 P.L.1963, c.73 (C.47:1A-1 et seq.), commonly referred to as the open
32 public records act.